

ARIZONA TRANSACTION PRIVILEGE TAX RULING
TPR 08-__
DRAFT (10/23/08): FOR REVIEW AND COMMENT PURPOSES ONLY

ISSUE:

Application of the car rental surcharges.

APPLICABLE LAW:

Arizona Revised Statutes (A.R.S.) § 48-4234(A) provides that the board of directors of a special taxing district may levy, and if levied, the Department of Revenue shall collect a car rental surcharge in order to retain, attract or relocate a major league baseball spring training operation.

A.R.S. § 48-4234(B) provides that "[t]he board shall set the car rental surcharge...at a rate not to exceed two dollars fifty cents on each lease or rental of a motor vehicle licensed for hire for less than one year and designed to carry fewer than fifteen passengers regardless of whether such vehicle is licensed in this state."

A.R.S. § 48-4234(I) defines "motor vehicle" as a self-propelled vehicle operated on the streets and highways of this state that is primarily intended to carry passengers and is licensed for hire in the district without a driver.

A.R.S. § 48-4234(C) provides that the surcharge is not taxable under the personal property rental classification.

A.R.S. § 48-4234(D) provides that "the surcharge does not apply to the lease or rental of a motor vehicle to an automobile dealership, a repair facility, an insurance company or any other person that provides that vehicle at no charge to a person whose own motor vehicle is being repaired, adjusted or serviced."

A.R.S. § 48-4234(E) provides that "if a business demonstrates that it is subject to a surcharge imposed by the voters under section 5-839, the business is entitled to a credit against the surcharge imposed pursuant to this section equal to the amount of the surcharge paid pursuant to section 5-839, except that the credit shall not exceed the amount of the surcharge imposed pursuant to this section."

A.R.S. § 5-839(A) provides that the qualified electors residing in a tourism and sports authority may levy and, if levied, the department of revenue shall collect a car rental surcharge.

A.R.S. § 5-839(B) sets the rate of the surcharge at "[t]hree and one-fourth per cent of the gross proceeds or gross income from the business or two dollars fifty cents on each lease or rental, whichever is more."

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A.R.S. § 5-839(C) provides that “the surcharge applies to the business of leasing or renting for less than one year motor vehicles for hire without a driver, that are designed to operate on the streets and highways of this state and that are primarily intended to carry not more than fourteen passengers, regardless of whether the vehicle is registered or licensed in this state.”

A.R.S. § 5-839(D) provides that “the surcharge does not apply to the lease or rental of a motor vehicle to an automobile dealership, a repair facility, an insurance company or any other person that provides that vehicle at no charge to a person whose own motor vehicle is being repaired, adjusted or serviced.”

A.R.S. § 5-839(E) provides that the surcharge is not taxable under the personal property rental classification.

DISCUSSION:

There are two different surcharges involved in the rental of motor vehicles: (1) the baseball spring training facility car rental surcharge (“Spring Training Facility Surcharge”); and (2) the multipurpose facility car rental surcharge (“Multipurpose Facility Surcharge”).

The “Spring Training Facility Surcharge”

A.R.S. § 48-4234 provides for a “Spring Training Facility Surcharge” to promote Major League Baseball Spring Training. The one-time fee per each “motor vehicle” rental is \$2.50 on vehicles rented in Maricopa County and \$3.50 on vehicles rented in Pima County. This surcharge is only imposed if the rental term is for less than one year and the vehicle is “designed to carry fewer than fifteen passengers.” A.R.S. § 48-4234(B)(1). The surcharge applies even if the vehicle is not licensed in Arizona. The surcharge does not apply if the vehicle is rented with a driver.

The surcharge does not apply to the lease or rental of a motor vehicle to an automobile dealership, a repair facility, an insurance company or any other person that provides the vehicle at no charge to a person whose own motor vehicle is being repaired, adjusted or serviced. A.R.S. § 48-4234(D).

The income derived from the surcharge is not subject to the transaction privilege tax imposed under the personal property rental classification. A.R.S. § 48-4234(C)

The “Multipurpose Facility Surcharge”

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A.R.S. § 5-839 imposes the “Multipurpose Facility Surcharge” that was approved by voters in November 2000 for the purpose of funding a football stadium for the Arizona Cardinals. Many of the provisions of A.R.S. § 5-839 are identical to those listed in A.R.S. § 48-4234. The surcharge is a one-time fee per each “motor vehicle” rental that is only imposed if the rental term is for less than one year and the vehicle is “primarily intended to carry not more than fourteen passengers.” A.R.S. § 5-839(C). The surcharge applies even if the vehicle is not licensed in Arizona. The surcharge does not apply if the vehicle is rented with a driver.

The applicable rate of the surcharge is \$2.50 on each lease or 3.25% of the gross income from the business, whichever is more. A.R.S. § 5-839(B)(1).

A.R.S. § 5-839(B)(2) provides that the surcharge applies at the rate of \$2.50 when a vehicle is loaned by a motor vehicle repair facility or car dealer or rented by a person temporarily to use while the vehicle that it is replacing is not in use because of breakdown, repair, service, damage or loss. When a vehicle is rented by a person as a replacement for their own vehicle that is not in use because of breakdown, etc., the vehicle lessor should obtain a statement from the lessee that the vehicle is being rented as a replacement vehicle. This statement provides supporting documentation for the lessor as to the reason why the \$2.50 tax applies instead of the 3.25% tax.

The surcharge does not apply when a car rental company rents a car to a car dealership, repair facility, insurance company or other person that provides the vehicle at no charge to a person whose own vehicle is being repaired or serviced. A.R.S. § 5-839(D).

The income derived from the surcharge is not subject to the transaction privilege tax imposed under the personal property rental classification. A.R.S. § 5-839(E).

A vehicle rental business in Maricopa County is subject to the “Spring Training Facility” tax imposed under A.R.S. § 48-4234, as well as the “Multipurpose Facility” tax imposed under A.R.S. § 5-839. A.R.S. § 48-4234(E) provides that there can be no duplication of tax. Therefore, a rental company is entitled to a credit against the “Spring Training Facility” tax imposed under A.R.S. § 48-4234 equal to the amount of the “Multipurpose Facility” tax paid pursuant to A.R.S. § 5-839, except that the credit must not exceed the amount of the surcharge imposed under A.R.S. § 48-4234. Simply stated, if a rental is subject to tax of 3.25% of the gross income under the “Multipurpose Facility” tax, it is not also subject to the \$2.50 “Spring Training Facility” tax. Of the amount of tax collected based on 3.25% of the total rental amount, \$2.50 will be for the “Spring Training Facility” tax and the remaining amount will be for the “Multipurpose Facility” tax.

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RULING:

The "Spring Training Facility Surcharge" and the "Multipurpose Facility Surcharge" are both levied in a specific amount on each "lease" or rental of a "motor vehicle" licensed for hire for less than one year and designed to carry fewer than fifteen passengers. The statutes require that there be a "lease" and that the "motor vehicle" being leased meet the definition provided in statute.

Lease Requirement:

A lease, with reference to tangible personal property, is defined as "a contract by which one owning such property grants to another the right to possess, use and enjoy it for specified period of time in exchange for periodic payment of a stipulated price, referred to as rent". Black's Law Dictionary 889 (6th ed. 1990), citing *Undercofler v. Whiteway Neon Ad, Inc.*, 114 Ga. App. 644, 152 S.E.2d 616, 618. "Rent" is defined as "the consideration paid for use or occupation of property." Black's Law Dictionary 1297 (6th ed. 1990). Therefore, if the use of a motor vehicle is provided on a complimentary basis, i.e. without charge, the car rental surcharge does not apply.

The surcharge applies at the location of the execution of the lease.

Motor Vehicle Requirement:

The language in both A.R.S. § 48-4234 and A.R.S. § 5-839 refer to the surcharge on leasing or renting (for less than one year) a *motor vehicle*. Both sections define a "motor vehicle" as "a self-propelled vehicle operated on the streets and highways of this state that is primarily intended to carry passengers and is licensed for hire in the district without a driver." A.R.S. § 48-4234(I). In addition, these "motor vehicles" must be "primarily intended to carry not more than 14 passengers." A.R.S. § 5-839(C); A.R.S. § 48-4234(B)(1). If a vehicle is designed to hold a total of 15 people including the driver, the vehicle is intended to carry not more than 14 passengers; therefore, the car rental surcharge applies.

The car rental surcharges apply to the following types of vehicles when the statutory requirements are met:

1. Passenger vehicles, carrying fewer than 15 passengers:
 - cars
 - trucks, not including delivery trucks rented primarily for purposes

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of hauling property rather than passengers

- vans, not including cargo vans rented primarily for purposes of hauling property rather than passengers.

2. Motor homes.

3. Motorcycles, mopeds and scooters which are licensed for use on the streets and highways.

4. Golf carts which are licensed for use on the streets and highways.

RELATED ISSUES:

If vehicles leased as part of a fleet are rental vehicles at the time that lease is entered into, and that lease is for a period less than one year, then that lease is subject to the surcharges. When an individual vehicle is subsequently leased, a separate surcharge is applicable to each lease transaction.

When a leased vehicle breaks down and is replaced by a second vehicle, if use of the second vehicle is merely a continuation of the original lease in that there is no additional consideration given in regard to the second vehicle, there are no additional surcharges.

In a lease for re-lease, the surcharges are applicable to both the initial lease and the re-lease if the other surcharge requirements are met.